

REMARKS

Claims 1-20 were originally filed in the present application, and were eventually cancelled. Claims 21 – 40 were previously added in the present application, remain pending, and were each rejected.

In the January 29, 2007 Office Action, the Examiner rejected Claims 21-40 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In reviewing a claim for compliance with 35 U.S.C. § 112, second paragraph, the Examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. § 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished), where the court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor's contribution to the art. Upon review of the claim in its entirety, the court concluded that the claim at issue apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112 paragraph 2. See also *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004), which stated that "The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct

principles.... Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite."

The Examiner's entire rejection is (entire paragraph *sic*, boldface in original):

As to claims 1, 29, 37, and 37 the claims invention are full with the words "**capable**" which of renders claim(s) indefinite. Therefore, the claim are required correction in appropriate.

The Examiner's only complaint appears to be that the word capable is used. The word "capable" is easily and immediately understood by those of skill in the art. The word "capable" does not, in itself, render any claim indefinite. In fact, a quick search on the USPTO website indicates that over 200,000 issued patents include the word "capable" in the claims.

The Examiner may wish to consider the discussion in MPEP § 2173.05(g), which clearly indicates that such functional language as "capable" is perfectly appropriate.

As all claims are clear and definite, the rejections under 35 U.S.C. § 112, second paragraph are traversed.

SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

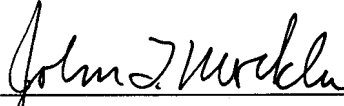
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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